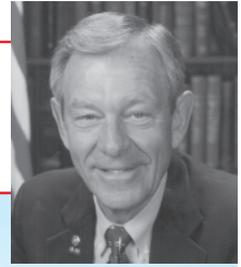


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# Under Siege

*The Threats to Manufacturing and How Congress Must Act to Save This Critical Business Sector*

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By: Senator George V. Voinovich

As manufacturing is responsible for more than one quarter of Ohio's Gross State Product, the state of our manufacturers – both large and small – is very important to the well being of Ohioans. More than one million jobs in Ohio are a result of manufacturing, with an annual payroll of more than \$45 billion. The manufacturing sector in Ohio accounts for the second highest weekly earnings of any economic sector and supports local communities and schools with more than \$1 billion in corporate franchise and personal property taxes. Unfortunately, between May, 2000 and July, 2003, Ohio lost 170,000 manufacturing jobs.

Manufacturers have been steadily improving their efficiency and productivity. The Labor Department reported in December that the third quarter of 2003 was the most productive for manufacturers since 1983. Investments in training and capital have made our manufacturing sector the envy of the world. Despite this, the sector is still burdened with some tough challenges. Factors outside the control of manufacturers have presented them with problems that threaten their survival. Unfair foreign trade practices – especially from China, soaring costs for energy and health care, and trial attorneys who abuse our courts in pursuit of a dollar have come together in the perfect storm that threatens to swamp manufacturers.

## THE THREATS:

### 1. Unfair Chinese Trade Practices

Foreign competition from China has become a primary concern for many manufacturers. It would be one thing if American manufacturers faced their Chinese competitors on a level playing field, but they do not. Blatant disregard for international law and significant currency manipulation by the Chinese government conspire against American manufacturers who enjoy no such advantages.

The refusal of the Chinese government to enforce internationally-accepted intellectual property rights laws is well known and well documented. The result has been billions of dollars in lost revenue for America's computer software, entertainment and even auto parts industries.

Less known, but far more damaging, has been the Chinese government's long-term and persistent effort to deliberately undervalue its currency to make Chinese-made products cheaper than those of other countries.

The Chinese government refuses to allow its currency, the yuan, to trade freely on international currency markets. Instead, for the past decade, the Chinese have kept the value of the yuan unchanged and fixed at an exchange rate of 8.3 to the dollar. The



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President's Export Council reported that this practice undervalues the Chinese currency against the dollar by as much as 40 percent.

The result is that Chinese products imported to the United States are 40 percent cheaper than similar American products and that American products exported to China essentially face a 40 percent tariff.

## 2. Rising Energy Costs

Of all the challenges facing manufacturers, perhaps the one they are most powerless to address is the rising cost of energy. Because so much of our nation's energy comes from overseas, and because so little energy can be sourced domestically because of overly restrictive government regulations, solutions to the problem of rising energy costs remain just out of reach for manufacturers large and small.

Over the next 20 years our nation's demand for energy will increase by 42 percent. Meeting this demand is essential to maintaining our nation's place in the world economy, providing jobs for Americans, preserving development of cutting edge technology, and preserving economic stability.

Oddly enough, at a time when we need to generate more electricity, some are trying to limit our choices for generating it. Legislation introduced by Senators Jim Jeffords (I-VT) and Joseph Lieberman (D-CT) would essentially force all electricity generation to switch to natural gas and away from coal and other energy sources.

## 3. Frivolous Lawsuits

In 2002, the American Tort Reform Association produced a study entitled "Lawsuit Abuse and Ohio" that captured the impact of

out-of-control litigation on Ohio's economy. It found that lawsuit abuse costs every Ohioan \$636 per year, and every family of four \$2,544 per year. These costs come in the form of goods and services made more expensive by runaway jury awards against companies that are able to evade the bankruptcy that dooms many companies targeted by litigation.

Since my days as governor of Ohio, I have been concerned with what I call the "litigation tornado" that is sweeping through Ohio, as well as the nation. Ohio's civil justice system is in a state of crisis. Ohio doctors are leaving the state and many have stopped delivering babies because they can't afford the liability insurance. Additionally, many Ohio businesses are going bankrupt as a result of runaway asbestos litigation.

In 1996, as governor of Ohio, I was instrumental in the passage of H.B. 350 – strong tort reform legislation that became law in Ohio, for a while. It might have helped today's liability crisis, but it never got a chance. In 1999, the Supreme Court of Ohio, in a politically motivated decision, struck down Ohio's civil justice reform law, even though the only plaintiff in the case was the Ohio Academy of Trial Lawyers – the personal injury bar's trade group. What was their reason for challenging the law? They claimed their association would lose members and lose money due to the civil justice reform laws we enacted.

Now, manufacturers operate without any protection from trial attorneys and defendants seeking only one thing: big dollar jury awards.

## 4. Rising Health Care Costs

Employers are expected to see another double-digit increase in health care costs in 2004 – the fifth straight year of double-digit growth. To remain competitive, employers have offered

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valuable health care benefits to their employees – but at the end of the day, manufacturers are not in the business of providing health insurance and these rising costs are threatening their competitiveness and ultimately their survival.

One of the key contributors to the rise in health care costs is the rise in medical liability costs. Doctors are paying more and more for medical liability insurance because of the lottery mentality some have toward the civil legal system. The result is higher medical fees and reduced access to health care as doctors leave the practice of medicine or move to states with lower medical liability costs.

The facts indicate a crisis is out of control:

- Medical Liability Monitor ranked Ohio among the top five states for premium increases in 2002.
- OHIC Insurance Co., among the largest medical liability insurers in the state, reports that average premiums for Ohio doctors have doubled over the last three years.

The anecdotal evidence is just as alarming:

- In Columbus an obstetrician has seen coverage for his two-physician OB-GYN practice climb to over \$100,000 a year. And he expected his premiums to rise an additional 20-25 percent.
- A geriatrician in Cuyahoga Falls saw his annual medical liability premium jump \$5,700 to \$34,000 last year. He had been warned that it could reach \$100,000 this year if he continued treating patients in nursing homes. In May he received an unexpected ultimatum from his insurer and every other carrier he queried: agree to stop seeing nursing home patients or lose liability coverage altogether. As a result, 150 of his patients had to find a new doctor.

- After practicing for 15 years in Cleveland – their entire careers – a husband and wife team of doctors decided to leave Ohio to seek refuge from overwhelming liability premiums. Their insurance agent warned them that both would soon be paying \$100,000 in annual premiums, up from \$30,000 this year. They resettled in Wisconsin.

## **ACTION IS NEEDED NOW**

It would be hard enough for a company to survive one of these assaults, but all four create a confluence of challenges that have already doomed many manufacturers and which is gaining on even the best-run companies. Swift action is needed on every front to prevent the loss of a business sector that is crucial to the economic vitality of entire regions of the nation, and to our nation's long-term economic and national security.

## **WHAT MUST BE DONE**

### **1. Level the Playing Field with Chinese Imports**

China must immediately stop manipulating its currency in order to make its products artificially less expensive than those of other nations. If it will not agree to do this, then tariffs should be placed on Chinese imports to put them on a level playing field with American products.

In September 2003, the Senate called on China to keep its commitment to move to a market-based valuation of the yuan, in keeping with the trade rules and principles of the modern, industrialized community of nations. I cosponsored the measure, Senate Resolution 218, which passed on September 25, 2003.

In October 2003, I joined Ohio's other senator,

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Mike DeWine, and other senators, in writing to U.S. Trade Representative (USTR) Robert Zoellick asking him to initiate an investigation under section 301 of the Trade Act of 1974 to determine whether or not China has been manipulating its currency. If it has, then the USTR would work with Chinese trade authorities to try and remedy the situation. If an agreement with China could not be reached then the USTR could file retaliatory tariffs to adjust for the advantage afforded Chinese imports by the artificially low yuan in order to level the playing field for American manufacturers. A Sense of the Senate resolution has also been introduced calling on Ambassador Zoellick to begin a 301 investigation.

In the event that these efforts aren't successful and the Chinese continue to refuse to give up these unfair trade practices, stronger measures to address the issue could be necessary. Among them is the Currency Harmonization Initiative through Neutralizing Action Act of 2003 or CHINA Act, introduced in the U.S. House of Representatives by Rep. Phil English (R-PA) and in the U.S. Senate by myself. The legislation would require the Secretary of the Treasury to analyze and report to Congress whether China is manipulating its currency to achieve an advantage in trade, and to what degree. If manipulation is found, the Secretary would be required to levy tariffs equal to the percentage found and in addition to tariffs currently in place on Chinese imports.

Pressure on China from the Bush Administration can also affect change and manufacturers and Members of Congress have both reached out to Administration officials asking for their involvement. I have written to Treasury Secretary John Snow concerning the harm that China is doing to American manufacturers and urged him to get involved. I also arranged a meeting with Ohio manufacturers and Commerce Secretary Don Evans so he could learn first hand about the

difficulties they are facing. I have scheduled additional hearings and events in the future to highlight the impact that trade policies, the enforcement of trade laws, and the work of the Administration is having on manufacturers.

Additional pressure and attention must be raised about this problem until the Chinese abandon their policy of artificially undervaluing the yuan, the legislation is enacted and the Administration mounts a dedicated effort to pressure the Chinese.

## **2. Keep Energy Costs Low**

Every effort should be made to help reduce the cost of energy by resisting government policies that would limit energy sources and thereby drive up energy costs.

Limiting our energy sources and putting all of our eggs in one basket would only lead to massive job losses, higher energy costs, and economic decline—not to mention more blackouts. Instead we should be finding environmentally responsible ways to expand the full range of energy sources: natural gas, renewables, coal, petroleum and nuclear.

The defeat of the Energy Bill in November 2003 was a significant blow to manufacturing as the bill would have helped increase our supply of all types of energy and keep energy costs low. The bill's defeat reinforces the urgency to enact the President's Clear Skies plan, which would harmonize our energy and environmental policies and encourage the development of a balanced collection of energy sources while reducing harmful air pollutants by 70 percent. As chairman of the Subcommittee on Clean Air, I am one of its main proponents. By setting realistic timetables for major reductions of power plant emissions, Clear Skies responsibly balances energy and environmental needs and keeps electricity and natural gas supplies affordable

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and reliable for manufacturers. The plan should be passed and signed into law.

Furthermore, I have worked to overhaul the outdated New Source Review program, which mandates that industrial facilities making major modifications must also install the most up-to-date pollution control equipment.

Clinton-era environmental activism at the US Environmental Protection Agency led to facilities being punished for conducting routine maintenance or installing more efficient equipment. This departure from the program's original intent has led to costly and contentious litigation and kept companies from making changes in line with the goal of the Clean Air Act: cleaning the air. As a result of urging from me and other members, the Bush EPA, in spite of criticism from environmental groups, has promulgated new rules to clarify and end uncertainty. These rules must be finalized and put into place.

### **3. End Frivolous Lawsuits and the Abuse of the Civil Justice System**

For our civil justice system to work we must strike a balance between the rights of aggrieved parties with legitimate grievances to navigate the judicial system and the rights of society to be protected against frivolous lawsuits and outrageous, disproportionate judgments made at the expense of society as a whole. Special effort must be made to end class action practices that award consumers worthless coupons and their lawyers with millions of dollars in legal fees, and to help keep Ohio businesses from going bankrupt from runaway asbestos awards that don't distinguish between truly sick workers and healthy plaintiffs only seeking money.

While reform efforts have been frustrated at the state level, I have continued the fight for a

fair and strong civil justice system in the United States Senate. I have worked to enact meaningful asbestos litigation reform that ensures that truly sick victims are compensated without sending more companies into bankruptcy. I testified twice before the Senate Judiciary Committee in support of legislation that would stem the tide of asbestos litigation, and was an original cosponsor of S.1125, the Fairness in Asbestos Injury Resolution Act of 2003, which would establish a system to pay victims faster, ensure that it is the truly sick getting paid, and provide the business community with the stability it needs to protect jobs and pensions. This legislation must be passed and signed into law in 2004.

I am also an original cosponsor of the Class Action Fairness Act of 2003, which is designed to improve the handling of massive U.S. class action lawsuits while preserving the rights of citizens to bring such actions. The bill also establishes a consumer class action bill of rights to provide judicial scrutiny of non-cash settlements, protection against discrimination based on geographic location, and clearer and simpler settlement information when sending out class action notices. This legislation is sorely needed to help people understand their rights in class action lawsuits and protect them from unfair settlements. It was one vote away from cloture in 2003 and will be brought back to the floor in 2004. It too must be enacted.

### **4. Control Health Care Costs**

Legislation must be passed to reduce medical liability costs and the upward pressures they put on overall health care costs for employers and consumers.

In order to preserve one of the most important benefits employers can provide their employees – health insurance – major changes are needed to bring health care costs under

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control. Though certainly one of the most difficult challenges facing manufacturers, the health care issue is one of the most important to resolve given that it echoes through so many areas: the health and well-being of employees and their families, access to our health care system, economic stability, and individual company stability.

Quick action must be taken to enact S. 11, the Patients First Act which:

- Sets sensible limits on non-economic damages to help restrain medical liability premium increases while ensuring unlimited economic compensation for patients injured by negligence;
- Limits attorneys' fees so that money awarded in court goes to injured parties;
- Mandates that relevant medical experts testify at trial, as opposed to highly-paid "expert witnesses" who are often used to influence juries and foster abuses in the legal system;
- Allows physicians to pay any large judgments against them over time in order to avoid bankruptcy; and
- Requires all parties to participate in alternative dispute resolution proceedings such as mediation or arbitration before going to court.

#### **5. Give Manufacturers a Dedicated Advocate in the Executive Branch**

Manufacturers need a dedicated advocate in the Department of Commerce to help identify issues that require reform in order to help encourage their survival.

I introduced legislation in June 2003, to create a new assistant secretary for manufacturing in the Department that would be charged with: (1)

representing and advocating for the interests of the manufacturing sector; (2) aiding in the development of policies that promote the expansion of the manufacturing sector; (3) reviewing policies that may adversely impact the manufacturing sector; and (4) assisting the manufacturing sector in other ways as the Secretary of Commerce shall prescribe.

The President announced that he would create the position during a speech on Labor Day in Northeast Ohio. Congress must act quickly to approve funding for the new position so it can be established and begin working on behalf of manufacturers. Accordingly, I have introduced an amendment to the Commerce Department's appropriations bill to pay for the new position.

## **CONCLUSION**

The challenges which manufacturers are facing certainly aren't in short supply. When you consider what they're up against—frivolous lawsuits, high energy and health care costs, unfair foreign competition, and burdensome regulations—it's a testament to their ability and determination that they're hanging in there. They need not suffer under these challenges, however, when there are sound public policy solutions available. I am committed to putting these solutions into place quickly so our manufacturing industries can get back on the road to recovery and prosperity—for owners, workers and our economic and national security.

